

The Lutheran Village
At Miller's Grant,

Petitioner

* BEFORE THE ZONING BOARD

* OF HOWARD COUNTY

* ZB Case 1056M

* * * * *

DECISION AND ORDER

On May 17, 2006 the Zoning Board of Howard County, Maryland, considered the petition of The Lutheran Village at Miller's Grant to amend the Zoning Map of Howard County so as to reclassify from the R-20 (Residential-Single) to the PSC (Planned Senior Community) Zoning District, with a Preliminary Development Plan for an age-restricted adult housing development, 50.0 acres of land located on the south side of Frederick Road approximately 500 feet west of Arcadia Drive, and identified as Tax Map 24, Grid 9, Parcel 1001 in the Second Election District of Howard County.

The notice of the hearing was advertised, the subject property was posted with notice of the hearing, and the adjoining property owners were mailed notice of the hearing as evidenced by the certificates of posting, advertising and mailing to adjoining property owners which were entered into the record. Pursuant to the Zoning Board's Rules of Procedure, all of the reports and official documents pertaining to the petition, including the petition, the Technical Staff Report of the Department of Planning and Zoning and the Planning Board's recommendation, were entered or incorporated into the record of the hearing. Both the Department of Planning and Zoning and the Planning Board recommended approval of the petition

The Petitioner was represented by David A. Carney, Esquire and William Erskine, Esquire. No one appeared at the hearing in opposition to the petition. Several community and

resident organization representatives and individuals testified in support of the petition, including Ms. Diane Butler, President of the St. John's Community Association, Ms. Kirsten Saxe, President of the Ellicott City Resident's Association, Cathi Higgins and Janice Bloodworth.

After careful evaluation of all the information presented, the Zoning Board makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Petitioner proposes rezoning of the 50.0 acre R-20-zoned subject property to the PSC Zoning District. Because the PSC Zoning District is a floating zone, the Petitioner presented testimony and evidence relating to the criteria in Section 127.1G. of the Howard County Zoning Regulations rather than to the change-mistake rule applicable to Euclidean rezoning cases. Mr. Geary Milliken, President and CEO of the Petitioner, testified on many of the details of the petition. Mr. Gregory Scott, an architect, testified on planning issues. The following information was provided from these witnesses' testimony or the Department of Planning and Zoning's Technical Staff Report, which the Board accepts and adopts as its own.

2. The Petitioner proposes, on its Preliminary Development Plan ("PDP"), that the intended use of the subject property is an age-restricted adult housing development, including assisted living units and skilled nursing care proposed as well as single-family detached, townhouse and apartment dwelling units. The PDP is depicted on a multi-sheet plan consisting of Exhibits 1 A through J, which addresses various elements/criteria of the PDP.

The Planned Senior Community on the PDP would include several different categories of residential units and senior-community oriented services and amenities. The principal uses are an age-restricted adult housing use with residential-living homes, townhouse apartments, apartments and an assisted-living care facility.

There would be approximately 36 single-family detached or semi-detached dwelling units, 48 townhouse-style apartments, 200 apartments in three and four-story buildings and a 60-bed assisted care component, which equals 15 dwelling units based upon the required density-equivalent ratio of four assisted-living beds to one dwelling unit as provided in the Zoning Regulations. The total of 299 dwelling units on 48.4 net acres results in a proposed density of 6.177 dwelling units per net acre.

3. The PDP shows the principal access to the development to be by an internal road running south into the property from the approximate center of the subject property's frontage on Frederick Road. The PDP proposes a guardhouse at this entrance/access point which is designed to provide privacy and security for the residents. There is a second access point shown to the public library and senior center facility on Parcel 1030 but the details of this access will have to be worked out through the development process.

4. The above-described internal road extends approximately 450 feet southward to a traffic circle around which development is proposed.

On the northwestern half of this circle several non-single-family detached Residential Living Homes are proposed (coded as No. 8 on the PDP); on the southeastern half of this circle, a parking lot and the front entrance to the main building are proposed.

The main building, described from northwest to southeast, consists of three-story residential apartments (coded as No. 1 on the PDP) at the front entrance and to each side of the front entrance, four-story residential apartments (coded as No. 2 on the PDP), a one-story building for dining/common areas (coded as No. 4 on the PDP), a one-story wellness center (coded as No. 5 on the PDP) and a one-story assisted-living building (coded as No. 7 on the PDP).

This proposed main building is located on one of the highest elevations of the subject property. It would be more visible from the adjacent library and senior center facility to the east than it would be from the residential neighborhoods to the west. This relative lack of visibility of the main building to the residential properties is based on several factors, including topography, separation distance, landscape buffering to be provided on-site and buffering by wooded areas to remain as open space.

A proposed internal road is proposed to surround the main building, with several smaller parking lots, instead of one large parking lot, being interspersed in the development. In addition, an outdoor recreation area is proposed for location to the southwest of the main building area. This recreation area (coded as No. 6 on the PDP) is proposed to include amenities such as shuffle board courts, a tennis court and exercise facilities.

Single and duplex one-story Residential Homes (coded as No. 8 on the PDP) are proposed to be located in the area of the subject property to between the main internal road and the western boundary of the subject property.

To the south of the main internal road, two-story residential town homes (coded as No. 3 on the PDP) and parking spaces are proposed for location. To the south of the town homes along the southern boundary of the subject property, five one-story single-family Residential Living Homes (coded as No. 8 on the PDP) are proposed to be located. A maintenance area and an adjacent parking area (coded as No. 10 on the PDP) are proposed for location to the east and southeast of the town homes.

To the southeast of the main internal road a secondary road is proposed to go north of an existing pond and up to a group of single-family detached dwelling units (coded as No. 9 on the

PDP) to be located in the southeast part of the subject property. These units would be surrounded by proposed open space uses.

5. 19 acres of open space is proposed on the PDP, approximately 39% of the subject property, considerably more than the minimum 35 percent open space required in the PSC Zoning District. The single most significant open space area is in the southeast portion of the subject property. That area is heavily wooded, will contain landscaping areas and surrounds the existing pond. Another large open space area is in the front of the development, comprising a 300 foot buffer area from Frederick Road. A landscaped buffer area of 50 feet will be established around the entire perimeter of the subject property. The landscaping plan is shown on Exhibit 1B.

6. The Petitioner proposes a 4,000 square foot community center to be located in the main building complex in the dining/common areas building. This center is proposed to provide lounge areas, meeting rooms and indoor recreation areas.

7. The Petitioner proposes that all housing types in the proposed development will be constructed for wheelchair access and movement with wide interior doors. Appliances, door knobs, light switches and bathroom fixtures will be designed and located to accommodate the aging senior residents. Mr. Scott indicated that the Petitioner would meet all of the State Office of Aging universal design principles, and in fact would exceed them.

Mr. Milliken pointed out that this proposed development was not for active seniors but instead was designed for seniors with an average age of 74-77, with the provision of skilled nursing, transportation, meal preparation and activity programs. Mr. Milliken indicated that a feasibility study had revealed that there was a great need for this type of age-restricted facility in the Ellicott City area.

8. Mr. Milliken testified that the proposed development would be constructed in either 2 or three phases depending on demand. He indicated that the first phase would include the construction of the overall infrastructure including roads, parking and utilities in addition to 150-170 apartment units and single-family units and the dining/common areas. The higher care units, many of the amenities and the development in the rear of the property would occur in later phases.

9. Both Mr. Milliken and Mr. Scott indicated that the Petitioner would have no difficulty in meeting the requirement to provide 10 per cent of the 299 dwelling unit development, or 30 dwelling units, as Moderate Income Housing Units ("MIHU"). It was emphasized that a wide range of income groups would be served because the Petitioner is a non-profit charitable organization as is Carroll Lutheran Village, a continuing care retirement community ("CCRC") operated by an affiliated organization in Carroll County. The Petitioner is a joint enterprise of Carroll Lutheran Village and a non-profit Miller family affiliate.

10. Mr. Scott testified that there are 27 buildable acres out of the 50 acre parcel. He indicated that these buildable acres are generally located in the middle of the site, the portion of it with the highest elevation. He also indicated that the architecture of the structures to be built would reflect Ellicott City's historical context, incorporating a variety of forms and shapes. He added that elements of shade and shelter along walking trails would also be incorporated into the overall layout of the development.

He proposed that the entrance to the property would be a kind of entrance court/village green with single-story homes being located at this initial view of the development.

Mr. Scott indicated that the higher density core of the subject property, with three and some four story buildings, the community center, the wellness center the assisted living units and

various amenities, would be located towards the center of the property, out of view of most adjacent properties.

Mr. Scott noted that the subject property's connection to the senior center and Miller library would be determined during site development, and that wetlands would have to be accommodated in making that connection.

Mr. Scott testified that concentrated parking was avoided in the development's design. He indicated that parking was dispersed and hidden as much as possible.

Mr. Scott testified that the layout of the proposed development generally placed single story dwellings around the perimeter on the subject property with two to four story buildings being located towards the middle of the property. He also indicated that the service court would be well screened.

Mr. Scott testified that the wooded, environmentally sensitive area located in the southeast portion of the subject property would be developed with a few single-family homes for independent seniors.

11. Mr. Mickey Cornelius, a traffic consultant, testified that the sight distance at the entrance of the subject property was more than adequate. He also indicated the traffic generated by the proposed development would not change the level of service of any of the roads required to be included in the APFO study. Mr. Cornelius testified that the trip generation rates used in his traffic study were derived from the rates compiled from the Carroll Lutheran Village facility in Carroll County.

CONCLUSIONS OF LAW

1. The PSC Zoning District is a floating zone so that the change-mistake rule criterion for deciding whether a proposed rezoning is justified is inapplicable. The criteria for deciding

whether a proposed rezoning is justified are contained in Section 127.1G.1 through 11 of the Howard County Zoning Regulations ("HCZR"). It is the petition's compliance with these criteria or standards for approval which will be applied as provided below in deciding the proposed rezoning. The Board finds that the Petitioner has met all of these standards of approval, thereby justifying the grant of PSC zoning as follows:

a. The proposed district will accomplish the purposes of the PSC District.

The purposes of the PSC District are detailed in Section 127.1.A of the HCZR. Those purposes include (1) to permit development that provides housing for those persons 55 or older that meets their diverse needs by providing independent living units within single-family or multi-family dwellings with the option of providing assisted living units or nursing care facilities; and (2) to ensure that the proposed development is compatible with residential neighborhoods through careful site planning.

The proposed rezoning to the PSC District for the subject property, based on the development of the subject property according to the proposed Preliminary Development Plan, will accomplish the purposes of the PSC District by providing single-family detached, semi-detached, attached and apartment dwelling units that are restricted to households with at least one member who are at least 55 years old or older residing there, together with numerous design features, amenities and services to meet the needs of seniors, including a 60-bed assisted living facility, as supported by the Board's Findings of Fact 2, 3, 6, 7 and 9. The Board finds that the proposed PSC development will be compatible with the nearby residential neighborhoods due to the site design and buffering proposed as part of the plan based on the Board's Conclusion of law 1.d.

b. The site meets the requirements of Section 127.1.B.

Section 127.1.B.1 through 8 of the HCZR contains specific objective requirements that have to be met. Each of those requirements and the Petitioner's compliance with those requirements are addressed as follows:

1. At the preliminary development plan stage and subsequent stages of plan processing and development, the site shall be served by both public water and sewer (Section 127.1.B.1 of the HCZR).

The Petitioner indicated that the subject property is in the Service Area for Public Water and Sewer. The Department of Planning and Zoning confirmed this in its Technical Staff Report. Therefore, the Board finds that the subject property will be served by both public water and sewer at this and the next stage of development.

2. The site has direct access to a collector or arterial road designated in the General Plan (Section 127.1.B.2 of the HCZR).

The subject property has direct access onto Frederick Road, a minor arterial road on the Transportation Map 2000-2020 of the 2000 General Plan according to the Department of Planning and Zoning's Technical Staff Report.

3. The development shall contain at least 50 dwelling units (Section 127.1.B.3 of the HCZR).

The petition proposes development of approximately 299 dwelling units, considerably more than the minimum requirement of dwelling units based on the Board's Finding of Fact 2.

4. The development shall contain at least two of the following types of housing: single-family detached dwellings, single-family attached dwellings, apartments, assisted living facilities, and nursing homes. At least one of the housing types shall be independent single-family or multi-family dwellings (Section 127.1.B.4 of the HCZR).

The proposed development contains at least four types of housing -- single-family attached units (townhouses), single-family detached and semi-detached and apartments, at least one of which is designed for independent living arrangements.

5. Open space shall constitute at least 35% of the gross acreage of the planned senior community (Section 127.1.B.5 of the HCZR).

The Petitioner proposes approximately 19 acres of open space as part of the development of the 50 acre subject property, which is 39% of its gross area, exceeding the minimum 35% open space requirement based on the Board's Finding of Fact 5.

6. The community shall include recreation and common areas for residents, including at least pathways and seating areas (Section 127.1.B.6 of the HCZR).

The Petitioner proposes recreation and common areas for residents on the PDP, including a community center and outdoor courtyards based on the Board's Finding of Fact 4 and 5.

7. At least ten percent of the dwelling units shall be moderate income housing units.

The Petitioner proposes that 30 Moderate Income Housing Units (MIHUs) would be provided as part of the approval of the PSC rezoning and PDP which is at least 10% of the proposed 299 units based on the Board's Finding of Fact 9. The Petitioner indicated that the units would be provided within the apartment buildings and dispersed throughout the site.

8. At least one on-site community building or interior community space shall be provided that contains a minimum of:

- a. 20 square feet of floor area per dwelling unit for developments of less than 100 dwelling units, and
- b. 10 square feet of floor area per dwelling unit above 99.

The Petitioner proposes a 4,000 square foot community building which is in compliance with the community building required by this subsection based on the Board's Finding of Fact 6.

c. Safe public access is available to and from the site. This includes a determination that roads serving the proposed development have the capacity to handle the increased use which is likely to result from the volume and density of the proposed development as well as development on surrounding properties. The width, sight distance and general condition of surrounding roads shall be considered in making this finding.

This access point to the subject property via Frederick Road will be safe due to more than adequate sight distance at this access point based on the Board's Findings of Fact 11.

The Board notes that the increase in traffic attributable to the proposed development will leave the area roads with acceptable levels of service based on the Board's Finding of Fact 11.

d. Proposed buildings are compatible with residential development in the vicinity based on scale and character of new buildings or through setbacks and landscaping.

The proposed residential development will be compatible with existing vicinal residential development based on the Board's Finding of Fact 4 and 10. The Board finds that the multi-story buildings in the main building complex are located in the center of the property well distanced from the surrounding residential neighborhoods and roads, thus minimizing any perceived mass and scale of those buildings. Single-story buildings are developed along the edges of the property, thus providing an appropriate transition to the adjacent single-family detached residential areas. Adequate buffering/landscaping is provided around the entire perimeter of the subject property. The architectural design of the proposed buildings is residential in character, with gabled roofs and front porches. The few institutional design elements are well buffered and screened.

e. Sufficient area is set aside as open space to provide green area and recreational amenities for the residents and transition areas and buffering for adjacent neighborhoods.

There is more than adequate open space proposed on the PDP to provide green areas and recreational amenities for the future residents of the community as previously indicated in Finding of Fact 5 and Conclusion of Law 1.b.5.

f. Suitable common areas and amenities are provided for residents, including pathways, seating areas, and an adequately sized community building or interior space.

As previously indicated in Finding of Fact 4 and 6 and Conclusion of Law 1.b.6. and 8., there are courtyards, a community building and recreation areas that provide suitable common areas and amenities for the future residents of the proposed community.

g. Business uses which are permitted as accessory uses will be sized for use solely by residents of the PSC District... [etc.]

There is no business use proposed as part of the plan, so this subsection is inapplicable.

h. For a development that will be built in phases, open space areas will be provided in each phase to meet the needs of the residents unless otherwise provided in an earlier phase.

The proposed phasing plan for the development of the subject property in either two or three phases will ensure that adequate open space is available in each phase to meet the needs of the residents.

i. The development and proposed dwellings are designed for older adults and incorporate universal design features. Exterior site improvements and individual dwellings will be accessible to and adaptable for residents with mobility and functional limitations.

As indicated in the Board's Finding of Fact 7, the development and proposed dwellings are designed for older adults and will meet and exceed the required universal design features.

j. The development will be subject to covenants or other legal restrictions enforcing the age restrictions required for this zoning district. The legal entity that will implement and maintain the age restrictions, as well as the open space and common facilities, is clearly identified. The legal entity shall be able to provide effective enforcement to supplement County enforcement of the Zoning Regulations.

Attached to the petition is Exhibit 1.I, a proposed Declaration of Restrictions which identifies the Board of Trustees of the Lutheran Village at Miller's Grant as the legal entity that will implement the enforcement of the required age-restrictive restrictions. If the rezoning is granted, these restrictions will be recorded as part of any development approval and will provide an effective enforcement entity for those covenanted age restrictions. This same legal entity will also be required to maintain the community's open space and common facilities.

k. The location of the proposed site is in conformity with the General Plan.


The proposed residential development is in harmony with the Residential Area designation for the vicinity of the subject property.

In addition the location of a PSC zone and development on the subject property will help to achieve the goal of General Plan Policy 4.3 of providing an adequate supply of senior housing for that fast growing segment of Howard County's population.

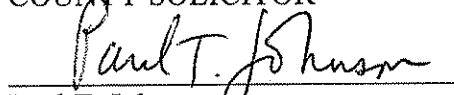
2. The Board concludes that Petitioner has met all the standards for approval of the proposed rezoning to the PSC District pursuant to Section 127.1.G.1 through 11. of the Howard County Zoning Regulations, and further concludes that the proposed rezoning is appropriate to apply to the subject parcel based on Petitioner's proposed Development Plan and Criteria.

Based on the foregoing findings of fact and conclusions of law, the Zoning Board of Howard County on this 31ST day of July, 2006, hereby GRANTS the Petitioner's request to rezone the 50 acre subject parcel from the R-20 to the PSC Zoning District based on Petitioner's proposed Preliminary Development Plan and Criteria as submitted to the Board.

ATTEST:


Robin Regner
Administrative Assistant

PREPARED BY HOWARD COUNTY
OFFICE OF LAW
BARBARA M. COOK
COUNTY SOLICITOR

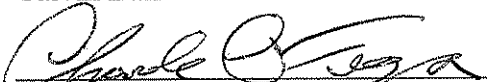

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